IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9863 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PANKESH M. PATEL - Petitioner(s)
Versus
BANK OF BARODA & 4 - Respondent(s)

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Appearance :
MR KISHOR M PAUL for Petitioner(s) : 1,
None for Respondent(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 13/04/2007

ORAL JUDGMENT

1. Heard learned advocate Mr. Kishor M. Paul appearing on behalf of petitioner.

2. In the present petition, petitioner

challenges the transfer order dated 28th September 2006 – Page 34 and dated 29th September 2006 – Page 35. The petitioner is transferred from Isanpur Branch, Ahmedabad Region to Kukarmunda Branch, Surat Region.

3. The petitioner approached this Court by way of filing Special Civil Application No.22340 of 2006. This Court has passed an order on 13th October 2006 with a direction to the respondent Bank to decide the representation of the petitioner against the transfer order. The respondent Bank decided the representation of the petitioner by letter dated 6th December 2006 and rejected the representation made by the petitioner. Then, again, further detailed representation has been made by the petitioner on 28th December 2006 – Page 53 to the respondent Bank. Thereafter, again, petitioner approached this Court by way of Special Civil Application No.2051 of 2007. Wherein, this Court, by order dated 22nd January 2007, again, directed to the

respondent Bank to reconsider the matter and pass appropriate reasoned order on the grievance of transfer. The respondent Bank has reconsidered the representation and detailed reply has been given to the petitioner by letter dated 17th March 2007 – Page 67 – 72, Annexure 'I'. Against that, present petition is filed by the petitioner being a third round of litigation against the transfer order.

4. Learned advocate Mr. Paul submitted that petitioner has been harassed by the respondent Bank. He relied upon this Bipartite Settlement arrived at between the parties. Item No.2/4 – Page 38 of the said settlement that Eighth Bipartite Settlement dated 2nd June 2005 relating to deployment of staff shall be applicable to the workmen in the Bank, with immediate effect, which are as under :

> (i) a workman in the non-subordinate cadre is liable to be deployed anywhere within a

"District", irrespective of the distance involved.

(ii) In cases necessitating deployment outside the District, the workman concerned may be deployed to any branch/office of the Bank situated outside the District upto a distance not exceeding 100 Kms., from his present place of posting.

5. Therefore, he submitted that petitioner cannot be transferred beyond 100 Kms., distance in the district considering his present place of posting. Therefore, Bank has violated the settlement.

6. Learned advocate Mr. Paul also relied upon one letter dated 15th February 2007 – Page 73, where, Item No.1, it is mentioned that disciplinary proceedings were initiated against Mr. Patel E.C.No.44964, Parekh/Clerk/Typist hither to posted at Isanpur Branch, Ahmedabad presently posted at Kukarmunda Branch, District Surat for the acts of gross misconduct alleged to

have been committed by him by issuance of Charge Sheet dated 29th June 2006. This Page 73 has been interpreted by learned advocate Mr. Paul as if that because of gross misconduct alleged against the petitioner, petitioner has been transferred by respondent Bank, which is not correct reading of the order. Actually, disciplinary proceedings were initiated against Mr. Paul for the act of gross misconduct alleged to have been committed by him. The reference to present posting at Kukarmunda Branch is only to indicate that earlier, petitioner was working at Isanpur Branch, now, he is presently working at Kukarmunda Branch. But, transfer order is not based upon misconduct as alleged in Page 73 order dated 15th February 2007. So, this order has been misinterpreted by learned advocate Mr. Paul and it is not correct that because of the allegation or misconduct, petitioner has been transferred from Isanpur Branch to Kukarmunda Branch. The charge-sheet is dated 29th June 2006 and transfer order dated 28th September 2006. So, petitioner is

not transferred because of alleged misconduct.

7. Learned advocate Mr. Paul further submitted that similarly situated other employees namely; Suresh Maganbhai Parmar, Anil Shamjibhai Jetwa and R.M. Parmar, - are transferred from Asarva Branch, Ahmedabad City Region to Mehsana Region as per settlement – Page 80. All the aforesaid persons were deployment not transferred which has been suggested by learned advocate Mr. Paul. Apart from that, a transfer of the concerned employee is a discretionary powers of the Management and it is not a legal right vested with the employees to remain continue in one place for years together. The management has power to decide that the concerned employee is suitable in which place. It is not a function of employee that he will be suited in a particular place. The transfer is an administrative decision taken by Bank unless it is malafide or become vindictive, this Court cannot interfere while exercising the powers under Article 226 of the

Constitution of India.

8. I have perused the reply Page 67 to 72 dated 17th March 2007, the petitioner has given detailed reply in respect to each contention raised in the representation made by the petitioner and ultimately, the bank has given cogent reason to point out that transfer is not based on malafide, not based upon allegations/misconduct and it is not a vindictive action taken by the Bank. Allegations of malafide require strict proof from the petitioner. There is no such proof has been produced by the petitioner against the Authority who has passed an order of transfer. Therefore, when petitioner is not having any legal right to remain in one place for number of years and transfer is an incident of service not disputed by the petitioner then respondent Bank is right in transferring the petitioner from Isanpur Branch to Kukarmundra Branch. For that, respondent Bank has not committed any error. The judicial review of such order is very limited

scope of interference by this Court under Article 226 of the Constitution of India.

9. The view taken by the Apex Court in ***Ekta Shakti Foundation v. Government of NCT of Delhi*** reported in ***AIR 2006 SC 2609***. The relevant ***Head Note 'A'*** is quoted as under :

> *"While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights*

of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere. The correctness of the reasons which prompted the Government in decision making is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.“

10. The Hon'ble Division Bench of Delhi High Court has also considered the case of transfer

when conduct of such employees is not proper and not suit to the administration and disturbing the peaceful working and misbehaviour by such employee, then, transfer is necessary to maintain harmony in the Institution. It is paramount importance and in large interest that peace and harmony is maintained in public Hospital which caters to medical needs of large section of poor citizen. That has been held to be valid which is reported in ***2007 (Lab IC) 409.*** The Hon'ble Apex Court in case of ***Union of India and Others v. Janardan Debanath and Another*** reported in ***(2004)4 SCC 245*** held that when the question of transfer due to inefficiency and misbehaviour held not barred by FR 15. In case of transfer for aforesaid reasons when concerned employee becomes undesirable to continue in the place where he is working then prima facie satisfaction of the Authority concerned based on contemporary record is sufficient. The Apex Court has observed that utmost latitude should be left with the department concerned to enforce discipline,

decency and decorum in public service. The transfer has to be determined by the employer upon the administrative necessities and the extent of solution, thereafter, the Apex Court cannot give a direction in this regard one way or the other. The question whether transfer in a particular case was in the interest of public service held requires factual adjudication. The examination of that question by High Court for its jurisdiction under Article 226 and 227 of the Constitution of India impliedly disapproved because it based on question of facts. The Apex Court further observed that transfer on the ground that the employee concerned was undesirable if to be preceded by departmental injury, such transfer unless adversely affecting service conditions or status or service prospects or leading penal consequences held need not be preceded by same type of departmental inquiry as is conducted in cases leading to dismissal discharge etc.

11. Recently, this Court in case of ***Nazmabegam Nazirbeg Mirza v. State of Gujarat & Anr.*** reported in ***2007(1) GLH 421*** decided the question of transfer. The relevant Para 6, 7, 10, 12 and 13 are quoted as under :

> *"6.* The law regarding interference of the Court in matters of transfer is no longer res-integra. The petitioners are both Police Constables and members of a disciplined and armed force. Although it may be true that the transfer of an employee sometimes causes difficulties and dislocation of the domestic setup of the concerned employee, however, merely on that ground, the order of transfer is not liable to be struck down. It is a settled position of law by a catena of judgments that unless an order of transfer is passed mala fide or in violation of the Rules of service or guidelines for transfer or without any reasonable justification or in a

colourable exercise of power, the Courts or Tribunals should not interfere with such an order of transfer. Transfer is an incidence of service and it is not for the Courts or Tribunals to direct the concerned executive authorities to transfer a particular person to a particular place or to restrain them from doing so.

7. In matters regarding transfer of members of the armed forces, the Supreme Court, in ***Major General J.K.Bansal v. Union of India and others – (2005) 7 SCC 227***, has observed as under:

"The decisions referred to herein to take notice of the law regarding the scope of interference in a writ petition filed under Article 226 of the Constitution assailing an order of transfer, were rendered in the case of civilian employees or those who are working in public sector undertakings.

The scope of interference by the courts in regard to members of armed forces is far more limited and narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted. The courts should be extremely slow in interfering with an order of transfer of such category of persons and unless an exceptionally strong case is made out, no interference should be made*." (emphasis supplied)*

The same principle will apply to a member of a disciplined and armed force such as the Police force, which is entrusted with the duty and responsibility of maintaining law and order in society.

10. The administrative exigencies and prevailing service conditions have to be considered and looked into by the concerned authorities, who are the best persons to do so. The reasons for rejection of the

representation of the petitioners contained in order dated 10.5.2000 are cogent ones, and no illegality has been committed by the respondents in doing so.

12. The scope of judicial review of the order of transfer of an employee is limited and unless there is an infraction of Rules or the said transfer is shown to be an outcome of a mala fide or colourable exercise of power, the Courts would not interfere as a matter of routine. In this regard, the observations made by the Hon'ble Supreme Court in ***National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan and another – (2001)8 SCC 574*** are pertinent and are therefore reproduced below:

> *“....No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an*

incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned....”

13. As observed earlier, no transfer order has been challenged in this petition and a prayer is made to issue directions to the respondents to transfer the petitioners to Ahmedabad forthwith. The prayer made by the petitioners in the Writ Petition is not liable to be granted since it is not for the Court to direct an executive authority, by issuing a Writ of Mandamus in proceedings under Article 226 of the Constitution, to transfer a particular employee to a

particular place. If such a direction is given, it would amount to interference in matters which are within the realm of the executive alone. Who should be transferred where, is for the concerned administrative Department to decide, looking to the administrative exigency and public interest. The representations of the petitioners have been duly considered. The petitioners were transferred to Vadodara in consideration of their representation, as directed by the order of this Court dated 14.9.1993 passed in Special Civil Application No.6776 of 1993. The rejection of their representation to be transferred to Ahmedabad vide order dated 10.5.2000 is neither illegal nor arbitrary, and does not disclose any mala fide or colourable exercise of power. Any personal inconvenience or difficulty faced by an employee cannot override the administrative exigency or public interest at large. The scope of interference in matters of transfer relating to disciplined and armed forces is

even narrower. The petition does not disclose any cause of action which may persuade this Court to exercise jurisdiction under Article 226 of the Constitution.“

12. The reply of Bank dated 17th March 2007 at Page 67 to 72, the relevant Para 4, 5, 6 and 9 are quoted as under :

“4. xxx xxx xx

However, reading Para 536 or any other provision of the Sastry Award, the Bank denies that your transfer amounts to redeployment as alleged or otherwise or that the Bank has violated the provisions of Para 536 as alleged or otherwise. The letters of the unions are not applicable as if they stated the rules or regulations or correct interpretation of the rules or regulations or relevant in the matter and there is no question of vindictive/punitive/ harassment transfer in your case.

5. With reference to para 10 of your

representation, we write to advise that Bank can rotate the employees who have completed 5 years or more years of service in the same branch/office under job-rotation Policy. However, Bank can transfer any employee to any branch as per its need even before completion of 5 years at any point of time and that too within the language area. Job Rotation Policy within city provides mere guidelines on the subjects.

6. With reference to contents of Para 11 of your representation, clause 20.17, of bipartite settlement is not applicable in your case. Your case does not fall within the parameters pertaining to physically handicapped or widows employed on compassionate grounds and is therefore the said criteria are rightly not considered in your case and there is no question of violation of rotation policy or settlements or provisions or guidelines or Sastry Award as alleged or otherwise.

9. Contents of para 14 of your

representation are not correct and do not further your case with respect to cancellation of transfer. Bank denies that in the Second interview your were not selected for ulterior motives as alleged or otherwise. The bank also denies that though you were fit to be selected as a Universal Teller you were not selected and other persons inferior to you were selected. Your perception about your performance cannot be the criteria for the interview panel to select you. If the interview panel finds other incumbents to be better than you they may select such incumbents and not you, however, the same cannot be terms as wrongly on the part of the management. The management of the bank is aware of the interest of the Bank and is trying to take care of the same. Your posting at Kukarmunda will give advantage to the Branch of your skills, about which you are canvassing. You were transferred to be posted in the Surat Region, which has, in turn posted you as per its requirements, which cannot be faulted with."

13. Recently, the Delhi High Court has decided the same issue in case of ***Shyam Sunder Aggarwal v. M/s. Globe Detective Agency (P) Ltd. & Ors.*** Reported in ***2007 LLR 390***. The relevant Para 8 is quoted as under :

> ***"8. I am in complete agreement with the observations of the Labour Court that the punishment awarded by the respondent commensurates with the misconduct. Where an employee refuses to abide by the transfer orders and does not join place of his posting, he cannot claim a right to work at the place of his choice and cannot rake the stand that he should not be terminated. Transfer is an incidence of service. It is the employer who has the prerogative to decide as to which employee should work at which of its office and who is suited for what job. An employee cannot dictate terms to employer as to where he should be posted and what work shold be assigned to him. The Labour Courts/Tribunals are not the***

appropriate fora to decide on the transfer of officers/workmen of an employer on administrative grounds. The will of administration of employer organization has to be allowed to run smoothly and the Courts should not interfere about the transfers of the workmen. It is for administration to take appropriate decisions and such decisions have to be considered valid unless they are vitiated either by malafide or by extraneous considerations based on proved facts (Refer to State of M.P. & Ors. v. S.S. Kourav & Ors., (SC) 1995 (70) FLR 1060).“

14. Therefore, in view of the aforesaid decision of the Apex Court and Gujarat High Court and considering the factual aspects of the present case, according to my opinion, the decision of the respondent Bank to transfer the petitioner is legal and valid, justified on the basis of factual aspects after considering the reply given by respondent Bank – Page 67 dated 17th March 2007. Therefore, according to my

opinion, this Court cannot interfere with the order of transfer being an administrative decision. This Court cannot act as an appellate authority. Therefore, considering the limited scope of judicial review, this Court cannot interfere with the transfer order which has been passed by the respondent Bank.

15. Therefore, there is no substance in the present petition. Accordingly, present petition is dismissed.

[H.K. RATHOD, J.]

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